

STATE OF MICHIGAN
COURT OF APPEALS

TERRIE ABEN,

Plaintiff-Appellant/Cross-Appellee,

v

OAKWOOD HEALTHCARE, INC.,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

December 19, 2006

No. 263813

Wayne Circuit Court

LC No. 03-309091-NZ

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Plaintiff, Terrie Aben, a registered nurse, appeals as of right from a final judgment dismissing the case entered following the jury's verdict in favor of defendant, Oakwood Healthcare, Inc., in this age discrimination action. Because the trial court did not deprive plaintiff of her right to a fair and impartial trial; did not err when it denied plaintiff's motion for a mistrial; did not abuse its discretion in ruling on the admissibility of evidence; properly granted defendant's motion for summary disposition regarding plaintiff's age-based hostile work environment harassment claim, we affirm.

I

Plaintiff's claim arises out of her employment as a registered nurse at defendant hospital system. In June 1998, plaintiff was aged 42 when she was hired on a contingent capacity in the ICU at Oakwood Annapolis Hospital by Ruth West, aged 34. Approximately one year later in June 1999 plaintiff went on full time status as a staff nurse in the ICU. Plaintiff's supervisor at that time was West, who was Clinical Manager of the ICU. At some point following, Debbie King became Clinical Manager of the ICU after West stepped down. Kathy Cronin became the Director of Nursing in 1998. In August 2000, both plaintiff and West applied for the position of Clinical Manager of the ICU. Plaintiff did not receive the position, and West was returned to her former position of Clinical Manager of the ICU.

Plaintiff took a medical leave from work in January 2002. When plaintiff reported that she was ready to return to work in April 2002 she demanded a transfer out of the ICU at Annapolis Hospital. Cronin and Bob James, defendant's Director of Human Resources, informed plaintiff that because of a suspension she had received in her personnel file, she was

ineligible for transfer out of the Annapolis ICU. Plaintiff resigned from her employment and later filed a complaint against defendant alleging discrimination on the basis of age. Essentially, plaintiff's complaint alleged the following three claims against defendant: (1) defendant denied plaintiff a promotion to the position of nurse manager in favor of a substantially younger and less qualified candidate; (2) defendant subjected plaintiff to a hostile work environment based on age; and (3) defendant constructively discharged plaintiff because of her age.

Plaintiff claimed that she performed her duties at the hospital in a satisfactory or better manner and that she had an excellent work history. Plaintiff alleged in her complaint, that despite her positive record, that her direct supervisors "regularly threatened her job and subjected her to demeaning comments and conduct because of her age, creating a hostile work environment" and "denied her promotional opportunities because of her age which contributed to the hostile work environment." Plaintiff claimed also that her supervisors were predisposed to discriminate on the basis of age. Specifically, plaintiff testified at her deposition, and at trial, that Cronin discriminated against her on the basis of age resulting in her not receiving a promotion, subjecting her to working in a hostile work environment, and ultimately, a constructive discharge.

Plaintiff testified that Cronin "wanted to remake the image of Oakwood." This included creating a nursing staff "of what [Cronin] called fresh, new, young faces that could be molded into what she thought was a good image for Oakwood." Plaintiff heard Cronin say that they needed "fresh, new young" faces on more than one occasion when Cronin would make rounds of the different nursing units throughout the hospital. This made plaintiff feel "used and washed up." Plaintiff also testified that Cronin would refer to plaintiff and another nurse, Mary O'Bryan, who was in her 50's, as "a couple of our older nurses" and referred to them as "hormonal as in menopausal." Further, plaintiff thought that Cronin viewed her differently and treated her differently. Cronin was not friendly to her, but she was friendly to other nurses, especially younger nurses. Plaintiff alleged that Cronin smiled at them, hugged them, spent time with them both at work and outside of work, and gave them "little nicknames" such as "girlie girl." According to plaintiff, Cronin literally skipped down the halls with the younger nurses at the hospital. Plaintiff testified that she told Cronin that Cronin was "a little old for that." Plaintiff stated that Cronin responded by saying that she was not the one that was old, "[plaintiff] was."

After plaintiff filed her complaint in the matter, defendant filed three separate motions for summary disposition on plaintiff's age discrimination claim, failure to promote claim, and age-based harassment claim. The court allowed plaintiff to proceed on her failure to promote claim regarding the position of clinical manager of the ICU which plaintiff sought in approximately August 2000 and allowed plaintiff to proceed on her constructive discharge claim. But, the court granted summary disposition regarding plaintiff's age-based harassment claim. The remaining claims went to the jury which found that plaintiff had not "proven by a preponderance of the evidence that her age was one of the motives which made a difference, i.e., a substantial or motivating factor for defendant not promoting her to the position of ICU clinical manager." The jury also found that plaintiff was constructively discharged, but that plaintiff had not "proven by a preponderance of the evidence that her age was one of the motives which made a difference, i.e., a substantial or motivating factor for her constructive discharge." Because the jury found for defendant on all counts, the trial court issued an order of judgment and dismissal.

Plaintiff first argues on appeal that the conduct of the trial judge, Judge Warfield Moore, during pretrial, voir dire, and throughout the course of trial deprived plaintiff of a fair and impartial trial. This Court has provided the standard for reviewing the conduct of a trial judge as follows:

The appropriate test to determine whether the trial court's comments or conduct pierced the veil of judicial impartiality is whether the trial court's conduct or comments 'were of such a nature as to unduly influence the jury and thereby deprive the appellant of his right to a fair and impartial trial.' [*Lansing v Hartsuff*, 213 Mich App 338, 349-350; 539 NW2d 781 (1995), quoting *People v Collier*, 168 Mich App 687, 698; 425 NW2d 118 (1988) (citations omitted).]

Further, this Court reviews a trial court's ruling on a party's motion for mistrial for an abuse of discretion. *In re Flury Estate*, 249 Mich App 222, 228; 641 NW2d 863 (2002). A mistrial is warranted only when the prejudice resulting from an error threatens the fundamental purposes of accuracy and fairness. *Id.*, at 229.

A review of judicial conduct against a claim of misconduct parallels an inquiry into the basis for judicial disqualification. In most instances, disqualification of a judge will require a showing of actual prejudice. MCR 2.003(B)(1). A party challenging the impartiality of a judge must overcome a heavy presumption of judicial impartiality. *Van Buren Charter Twp v Garter Belt, Inc.*, 258 Mich App 594, 598; 673 NW2d 111 (2003). "In general, the challenger must prove a judge harbors actual bias or prejudice for or against a party or attorney that is both personal and extrajudicial." *Id.* (citations omitted). However, that a judge repeatedly rules against a litigant, even if those rulings are erroneous, does not establish disqualification based on bias or prejudice. *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 597-598; 640 NW2d 321 (2001). Critical or hostile remarks made by a trial court judge to counsel or the parties also do not, as a general matter, establish disqualifying bias. *Cain v Dep't of Corrections*, 451 Mich 470, 497 n 30; 548 NW2d 210 (1996). Displays of annoyance, anger, frustration, impatience or dissatisfaction, if deemed within the bounds of what individuals may on occasion display, cannot establish partiality. *Id.* Expressions of annoyance or impatience are not enough to establish bias and impartiality. *In re Hocking*, 451 Mich 1, 13 n 16; 546 NW2d 234 (1996), citing *Liteky v United States*, 510 US 540, 555-556; 114 S Ct 1147; 127 L Ed 2d 474 (1994).

Plaintiff separates out her assignments of error in detail regarding the trial court's performance during the summary disposition hearings, jury selection, opening statements, plaintiff's examination of witnesses, plaintiff's motion for a mistrial, and also after denying plaintiff's motion for a mistrial. Plaintiff asserts that even before trial, the trial court revealed disdain and hostility toward plaintiff, plaintiff's claims, and plaintiff's counsel during the summary disposition motion proceedings when he "scoffed" at plaintiff's evidence of discrimination and made "disparaging comments" toward plaintiff and O'Bryan. Plaintiff sets out several exchanges between the trial court and plaintiff's counsel during the summary disposition phase of the litigation in her brief on appeal. After reviewing the replicated portions of the record, we found that some "statements" plaintiff attributed to Judge Moore were in fact amalgamations of completely unrelated sentence fragments and were taken out of context.

Importantly, all of the comments Judge Moore made during the summary disposition phase of the litigation were made outside of the presence of the jury and therefore could not have

unduly influenced the jury at trial. After searching out the complained comments in the record and reviewing them in context, we are convinced that Judge Moore may have expressed frustration with plaintiff's counsel, but Judge Moore expressed frustration with defense counsel as well, especially concerning scheduling difficulties for trial dates. Also, the record reveals that Judge Moore may have been feistier with plaintiff's counsel during the hearings, but only because plaintiff's counsel repeatedly challenged the trial court. After reviewing the context of plaintiff's specific complaints, as well as the general tenor of the summary disposition hearings, plaintiff has not shown anything more than expressions of annoyance or impatience. *In re Hocking, supra* at 13 n 16.

Plaintiff asserts that during voir dire, opening statements, and plaintiff's examination of witnesses, the trial court revealed disdain and hostility toward plaintiff and deprived plaintiff of a fair and impartial trial of her age discrimination claims. Specifically during jury selection, plaintiff argues that the trial court "told the potential jurors very clearly that in his opinion, Plaintiff was *not* old." But after reviewing the excerpt in context, it is clear that plaintiff took the trial court's comments out of context, and in fact, included only a portion of the entire statement in her brief on appeal. When reviewing the entire statement, in context, it is clear that no error occurred because the trial court stated that the mid-forties could be old, or not, and depends on one's perspective.

Plaintiff also alleges error occurred when the trial court engaged in an exchange with a prospective juror. Plaintiff claims that during an exchange, the trial court repeated his belief that plaintiff was not old. When reading the exchange in context, it is clear that it is the prospective juror who states that a forty-eight year old person is not old. The trial court once again commented that age is a matter of personal opinion and perspective. Plaintiff has shown no error in this exchange.

In plaintiff's final assignment of error regarding voir dire, plaintiff alleges that the judge erred when it relayed his own experiences with race discrimination as an African-American. Specifically, plaintiff states that specific statements the trial court made during voir dire "could have suggested to the jury that anything less overt than segregationist policies in the South in the 1960s was not true discrimination." However, aside from reproducing the statement in her brief on appeal, plaintiff has not supported her equivocal allegation. Read in context, the record shows that Judge Moore volunteered his own experiences with racial discrimination in response to a question to the jurors from defense counsel regarding whether any of them or close friends or family members had been victims of discrimination. When no jurors responded, the trial court shared his experiences.

Although the trial court's relation of a personal anecdote regarding racial discrimination in an age discrimination case may have been unusual or extemporaneous, it appears that the trial court was attempting to encourage jurors to feel comfortable answering defense counsel's inquiry of this sensitive issue. In fact, after the trial court's comments, two jurors answered the question posed to the jury. Again, although the trial court's detailed soliloquy may have been out of place during trial, it did serve a purpose, and plaintiff did not object during or at any point during the exchange. Further, it is possible that Judge Moore's comments may even have aided plaintiff's case since the trial court admitted that discrimination exists in the world and in fact, he had been a victim of discrimination.

Next, plaintiff argues that the trial court repeatedly showed “increasing impatience and hostility, and chastised her repeatedly” during her opening statement while at the same time, the trial court allowed defendant’s counsel to deliver her opening statement uninterrupted. Plaintiff also argues that the trial court showed bias when it apologized to the jury for plaintiff’s “protracted opening statement.” A review of the transcript of the opening statements reveals that the trial court’s behavior was not biased, and in actuality, plaintiff’s argument is disingenuous. The record reveals that the trial court only spoke in response to defense counsel objections during plaintiff’s opening. Defense counsel objected four times and the trial court interjected each time once the objection was made, and then followed up with plaintiff’s counsel if she continued in the same objectionable manner. And unlike defendant’s four objections, plaintiff objected only once during defendant’s opening and the trial court fielded the objection and followed up as it had during plaintiff’s opening. Despite plaintiff’s claims of disparity in treatment, the trial court treated the parties in the same manner and without bias. Further, the record shows that the trial court apologized for both lengthy opening statements and not just plaintiff’s opening. Plaintiff has shown no bias.

Plaintiff argues that the trial court acted inappropriately during plaintiff’s examination of witnesses. In particular, plaintiff states that “Judge Moore hijacked the testimony to tell the jury that Plaintiff’s counsel’s presentation was improper, that her efforts were not establishing age discrimination, and that they should be focusing exclusively on whether Plaintiff’s age was an issue.” However, a review of plaintiff’s examination of witnesses reveals that the trial court did not err. In fact, the trial court properly made evidentiary rulings when called upon by party objection, instructed the jury regarding permissible uses of evidence, guided the parties to comport with prior orders and evidentiary rulings of the court, and counseled counsel in following proper evidentiary procedure during trial.

Finally, viewing the record of the eleven day jury trial as a whole, we conclude that the trial court’s conduct and comments did not deprive plaintiff of a fair and impartial trial. Suggestions by plaintiff that the trial court’s conduct evidenced prejudice or bias are wholly unsupported and in part disingenuous. The court record is replete with instances of the trial court permitting plaintiff’s counsel to proceed with questioning of witnesses without interruption or comment. The trial court did not comment on the evidence or testimony presented. It did not unfairly criticize plaintiff, plaintiff’s counsel, or her witnesses, and did not question their credibility. Most of the comments asserted by plaintiff to be improper were actually the result of plaintiff’s counsel’s refusal to abide by trial court rulings. In fact, plaintiff’s counsel insisted on challenging trial court rulings while in the presence of the jury and engaging in verbal conduct that was unquestionably disrespectful of the court. The trial court’s instructions to the jury emphasizing that rulings by the trial court are not evidence were sufficient to cure any possible prejudicial effect attributable to the trial court’s comments and mistrial was not warranted. Since no error occurred, no prejudice resulted, and a mistrial was not warranted. *In re Flury Estate*, supra at 228-229.

III

Plaintiff argues that the trial court abused its discretion when ruling on the admissibility of evidence. The trial court’s admission of evidence is reviewed for an abuse of discretion. *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001). The trial court’s decision on a close evidentiary question usually cannot be an abuse of discretion. *Lewis*

v LeGrow, 258 Mich App 175, 200; 670 NW2d 675 (2003). “In *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003), the Supreme Court redefined the abuse of discretion standard:

an abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome. When the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court’s judgment. An abuse of discretion occurs, however, when the trial court chooses an outcome falling outside this principled range of outcomes. [(internal citations omitted)].” *Dykema Gossett PLLC v Ajluni*, ___ Mich App ___, ___; ___ NW2d ___ (#259218, rel’d 11/16/06).

Further, even if the trial court errs in admitting or excluding evidence, reversal is warranted only if a substantial right of a party is affected and it affirmatively appears that failing to grant relief would be inconsistent with substantial justice. MCR 2.613(A); *Miller v Hensley*, 244 Mich App 528, 531; 624 NW2d 582 (2001).

Plaintiff first argues that the trial court erred in admitting evidence of plaintiff’s attendance records other than at work. Specifically, plaintiff asserts that the trial court errantly allowed defendant to introduce any and all attendance records relating to plaintiff including prior and subsequent employers, and missed doctors’ appointments because these records were unknown to defendant at all pertinent times and had nothing to do with the decisions in this case. However, it is long held law in Michigan that “[o]nce either party has put some fact into evidence, the other party has an unquestioned right to fully develop all facts and circumstances surrounding the subject matter.” *Olweean v Wayne County Road Comm’n*, 385 Mich 698, 703; 190 NW2d 108 (1971). The record displays that plaintiff opened the door to attendance evidence not concerning defendant when she testified on direct examination about her positive attendance records and reviews outside of her employment with defendant. The evidence plaintiff testified about included positive attendance records and performance appraisals rating attendance at jobs she had both prior to and after her position with defendant. This being the case, defendant was likewise entitled to the opportunity to introduce evidence to fully develop plaintiff’s records of attendance and ability to fulfill her scheduled requirements.

Moreover, MRE 402 provides that all relevant evidence is admissible, with limited exceptions. “Relevant evidence” is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” MRE 401. Defendant’s presentation of evidence of the existence of attendance problems outside of plaintiff’s employ at defendant was relevant to show plaintiff’s methodology in dealing with attendance and potential disciplinary issues. Also, the evidence was relevant to rebut plaintiff’s theory of the case that defendant fabricated the attendance issues in order to discriminate against her on the basis of age and cause plaintiff’s constructive discharge. Therefore, the trial court’s admission of the attendance evidence was not in violation of MRE 404(b) and was not an abuse of discretion.

Plaintiff also argues that the trial court erred in excluding evidence of West’s attendance record while employed at defendant. In particular, plaintiff argues that the trial court improperly excluded this relevant evidence because plaintiff alleges that West and plaintiff had the same

supervisor, had their attendance reviewed on identical forms, and received the same numerical rating. The trial court reviewed plaintiff's request to admit this evidence and ruled that plaintiff was permitted to introduce West's attendance records that pre-dated the decision to promote West to the position of Clinical Manager of the ICU.

The trial court did not abuse its discretion when it excluded West's attendance records from the time frame after she was promoted because after West was promoted to clinical manager, she was no longer a staff nurse like plaintiff. West was no longer a "similarly situated, comparable" employee and therefore the relevant aspects of the employment situation were not nearly identical, and could not be properly used to establish a prima facie case of discrimination. See *Michigan Dept of Civil Rights ex rel Burnside v Fashion Bug of Detroit*, 473 Mich 863; 702 NW2d 154 (2005). Plaintiff has shown no error in the exclusion of the attendance records at issue.

Finally, plaintiff claims that the trial court erred in excluding evidence of the treatment and constructive discharge of another nurse, O'Bryan, by the same decision makers. It is plaintiff's position that this evidence regarding another complaint was admissible in this trial to show a discriminatory climate and was probative on the issue of whether the employer's asserted reasons for adverse employment actions were pretextual. O'Bryan brought a similar case against defendant involving the same department and the same decision makers and O'Bryan's claim settled. Although the trial court allowed O'Bryan to testify regarding allegedly discriminatory comments made by Cronin, plaintiff argues that the trial court erred when it precluded O'Bryan from testifying about her own experiences and discrimination complaints. Defendant responds that the contested evidence was highly prejudicial because O'Bryan's claims were based on discrete employment actions that affected O'Bryan and in no way affected plaintiff and the circumstances in this case.

The trial court reviewed plaintiff's request and ruled in particular that plaintiff "may introduce evidence of Mary O'Bryan's and other employee's claims provided that the testimony or evidence concerns conduct by Oakwood that is similar in all material respects to the conduct alleged by Plaintiff that is at issue." In fact, O'Bryan did testify at trial about what she observed while in defendant's employ including allegedly age-based discriminatory comments made by Cronin, and her opinions regarding the treatment of "older" nurses by defendant including plaintiff. Despite plaintiff's argument on appeal, the record shows that O'Bryan was allowed to, and did testify about a "discriminatory climate" at defendant. The trial court only disallowed testimony specifically relating to O'Bryan's own discrimination claim. Relevant evidence is generally admissible, MRE 402, but may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, MRE 403. The trial court's ruling comports with MRE 402 and 403 because although probative, it would have been unfairly prejudicial to allow plaintiff to establish her discrimination claim through evidence of the separate and distinct claims of O'Bryan. The trial court did not abuse its discretion.

IV

Plaintiff argues that the trial court erred in granting summary disposition in favor of defendants on plaintiff's age-based hostile work environment claim. This Court reviews de novo a trial court's decision regarding a motion for summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). The trial court did not specify under

which subrule it granted defendant's motion for summary disposition, but it appears that the court considered facts outside the pleadings at oral argument. Thus, we must not treat the motion as having been granted under MCR 2.116(C)(8). MCR 2.116(G)(5); *Velmer v Baraga Area Schools*, 430 Mich 385, 389; 424 NW2d 770 (1988); *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 539; 683 NW2d 200 (2004). We treat defendant's motion as granted under MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Veenstra, supra* at 163. The trial court must consider affidavits, pleadings, depositions, admissions, and any other evidence submitted by the parties in a light most favorable to the nonmoving party. *Id.* at 164. Summary disposition should be granted if there is no genuine issue of any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. MCR 2.116(C)(10), (G)(4); *Veenstra, supra* at 164.

To establish a prima facie hostile work environment claim, a plaintiff must demonstrate:

(1) the employee belonged to a protected group; (2) the employee was subjected to communication or conduct on the basis of the protected status; (3) the employee was subjected to unwelcome conduct or communication on the basis of the protected status; (4) the unwelcome conduct or communication was intended to, or in fact did, interfere substantially with the employee's employment or created an intimidating, hostile, or offensive work environment; and (5) respondeat superior. [*Downey v Charlevoix Co Bd of Co Rd Comm'rs*, 227 Mich App 621, 629; 576 NW2d 712 (1998); see also *Elezovic v Ford Motor Co*, 472 Mich 408, 412 n 4; 697 NW2d 851 (2005).]

"[W]hether a hostile work environment was created by the unwelcome conduct 'shall be determined by whether a reasonable person, in the totality of circumstances, would have perceived the conduct at issue as substantially interfering with the plaintiff's employment or having the purpose or effect of creating an intimidating, hostile, or offensive employment environment.'" *Quinto v Cross & Peters Co*, 451 Mich 358, 369; 547 NW2d 314 (1996) (citation omitted). Accordingly, to survive summary disposition, a plaintiff must present documentary evidence demonstrating the existence of a genuine issue regarding whether a reasonable person would find, under the totality of the circumstances, that the comments or conduct alleged were sufficiently severe or pervasive to create a hostile work environment. *Id.* at 369. A review of the record reveals that plaintiff's evidence is insufficient to maintain a cause of action for age-based hostile work environment.

Plaintiff has failed to demonstrate that, but for the fact of her age, she would not have been the object of harassment. See *Radtke v Everett*, 442 Mich 368, 383; 501 NW2d 155 (1993). Plaintiff claims that she suffered in a hostile work environment because she believed she did not fit into "Cronin's image or the age and the appearance of the kind of nurses [Cronin] wanted for Oakwood." Plaintiff asserted that Cronin watched her, made her feel paranoid, rolled her eyes when plaintiff walked by Cronin's desk, and sometimes would not bother looking at plaintiff. Plaintiff also asserted that Cronin said she wanted to hire "fresh, young faces" for the hospital, skipped down the hall with the younger nurses, and gave them special privileges that she did not give to plaintiff.

The majority of comments and actions described by plaintiff suggest that there may have been an objectively manifested personality conflict between plaintiff and Cronin. However,

plaintiff has provided no objective evidence whatsoever that but for plaintiff's age, the conflict would not have existed. In fact, the great majority of plaintiff's allegations are in fact age-neutral and have only been subjectively interpreted by plaintiff to imply age animus. Because the requisite connection between age and the behavior and comments alleged has not been arguably established, plaintiff has failed to meet the threshold requirement to establish her claim of age-based harassment. See *Corley v Detroit Bd of Ed*, 470 Mich 274, 279; 681 NW2d 342 (2004).

In addition, the element of respondeat superior requires a showing that an employer had notice of the alleged conduct constituting harassment and failed to take corrective action. *Elezovic, supra*; *Sheridan v Forest Hills Pub Schools*, 247 Mich App 611, 621; 637 NW2d 536 (2001). Courts are to apply an objective standard to determine whether an employer was provided adequate notice. *Id.* By analogy, "notice of sexual harassment is adequate if, by an objective standard, the totality of the circumstances were such that a reasonable employer would have been aware of a substantial probability that sexual harassment was occurring." *Elezovic, supra* (citation omitted). Plaintiff readily acknowledged that she did not report to supervisory or management personnel the alleged incidents or verbal comments.

During her deposition, plaintiff admitted she was aware that the hospital had a policy prohibiting harassment as well as a complaint procedure that she could follow to report allegations of harassment, but did not report any harassment based on her age. Plaintiff did submit a letter to Cronin dated April 8, 2002, just days before she alleges she was constructively discharged stating that she was subject to "a very hostile work environment . . . unjust harassment, discriminatory practices, . . . [and] vulgarity." The letter only gave defendant days to address the situation and in fact never mentioned that the hostile work environment was caused because of plaintiff's age. The letter alone is insufficient to establish that defendant had notice of the alleged age-based conduct constituting harassment and failed to take corrective action. *Elezovic, supra*; *Sheridan, supra*. Accordingly, plaintiff has failed to present evidence that defendants had notice of the alleged sexual harassment. The trial court properly granted defendant's motion for summary disposition regarding plaintiff's age-based hostile work environment harassment claim.

V

Defendant has alleged various errors on cross-appeal. Because our resolution of the foregoing renders the issues moot, we decline to address the merits of defendant's cross-appeal. *Commercial Union Ins Co v Liberty Mut Ins Co*, 426 Mich 127, 139; 393 NW2d 161 (1986).

We affirm the trial court's final judgment dismissing the case against defendant.

Affirmed.

/s/ Karen Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio